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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JOHN MARTIN RALLS III,
11 Plaintiff,
12 v.
13 FACEBOOK, et al.,
14 Defendants.

CASE NO. C16-0007JLR

ORDER DISMISSING
COMPLAINT WITH LEAVE TO
AMEND

15 **I. INTRODUCTION**

16 Before the court is Defendants Facebook, Inc. (“Facebook”) and Mark
17 Zuckerberg’s (collectively, “Defendants”) motion to dismiss (Mot. (Dkt. # 30)) Plaintiff
18 John Martin Ralls’s first amended complaint (FAC (Dkt. # 9)). The court has considered
19 Defendants’ motion,¹ the relevant portions of the record, and the applicable law.

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21 ¹ Mr. Ralls did not file a response to Defendants’ motion, and Defendants did not file a
22 reply brief in support of their motion. (*See* Dkt.)

1 Considering itself fully advised,² the court GRANTS Defendants’ motion for the reasons
 2 set forth below and DISMISSES Mr. Ralls’s complaint against Defendants without
 3 prejudice. The court also DISMISSES Mr. Ralls’s First Amendment claim against the
 4 United States of America (“the Government”) without prejudice and his Ninth
 5 Amendment claim against the Government with prejudice pursuant to 28 U.S.C.
 6 § 1915(e).

7 **II. BACKGROUND**

8 Mr. Ralls is proceeding *pro se* and *in forma pauperis* (“IFP”). (IFP Ord. (Dkt.
 9 # 5).) On February 4, 2016, the court dismissed Mr. Ralls’s original complaint under 28
 10 U.S.C. § 1915(e), which gives district courts authority to review IFP complaints and
 11 dismiss them if “at any time” the court determines that an IFP complaint is frivolous or
 12 fails to state a claim on which relief may be granted. (*See* 2/4/16 Ord. (Dkt. # 8)); 28
 13 U.S.C. § 1915(e)(2). The court determined that Mr. Ralls’s complaint was frivolous and
 14 gave Mr. Ralls 20 days to file an amended complaint. (2/4/16 Ord. at 2, 4). Mr. Ralls
 15 filed an amended complaint on February 22, 2016, and added the Government as a
 16 defendant.³ (FAC.)

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 19 ² Neither party has requested oral argument, and the court finds that oral argument would
 20 not be helpful to its disposition of the motion. *See* Local Civil Rules W.D. Wash. LCR 7(d).

21 ³ Mr. Ralls filed a second amended complaint on April 21, 2016. (SAC (Dkt. # 19).)
 22 However, Mr. Ralls did not move to amend his complaint before filing the second amended
 complaint (*see* Dkt.) and the content of his second amended complaint is identical to the first
 (*compare* FAC, *with* SAC). Therefore, Defendants seek to dismiss the operative complaint.

1 Mr. Ralls's amended complaint alleges two claims against Facebook: (1) breach
2 of contract of "Facebook's own 'Terms of Use' agreement with [Mr. Ralls]" and (2)
3 violation of Title II of the Civil Rights Act of 1964. (*See id.* at 2-4.) It is unclear whether
4 Mr. Ralls intends to assert these claims against Mr. Zuckerberg as well. Mr. Ralls
5 contends that Facebook "claim[s] . . . that [he] engage[s] in hate speech." (*Id.* at 2.)
6 According to Mr. Ralls, his "entire schtick . . . on Facebook is to call out and make
7 examples of the politically-correct." (*Id.*) Mr. Ralls contends that by "censor[ing]" the
8 content he posts, Facebook makes it difficult for Mr. Ralls to sell the book he has written,
9 which he alleges has led to "lost potential income." (*Id.* at 3.) Mr. Ralls further alleges
10 that he "ha[s] been so depressed over [his] inability to get [his] word out that [he] cannot
11 even finish [his] second book." (*Id.*)

12 Mr. Ralls also alleges that the Government violated his First Amendment rights:
13 "It is my assertion that my government is actively instructing Facebook to violate my
14 rights" (*Id.* at 4.) He states that he would "like to know if my government is having
15 Facebook trace me as a terrorist for no good reason." (*Id.*) Mr. Ralls further alleges that
16 the Government violated the Ninth Amendment by passing "unconstitutional" laws and
17 failing to protect him. (*See id.* at 3-4). Mr. Ralls appears to seek monetary damages
18 because he states that "[t]he lost potential income is obvious" and he is "seeking
19 compensation" "[i]n punitive damages." (*Id.* at 3.)

20 Defendants filed the instant motion to dismiss on August 3, 2016. (*See generally*
21 Dkt.) Defendants argue that Mr. Ralls's complaint must be dismissed because Mr. Ralls
22 "has failed to carry his burden of demonstrating personal jurisdiction over Facebook or

[Mr.] Zuckerberg.” (Mot. at 9.) Defendants also argue that, even if Mr. Ralls has demonstrated that the court has personal jurisdiction over Defendants, Mr. Ralls has failed to state a claim for which relief may be granted under Federal Rule of Civil Procedure 12(b)(6). (*Id.* at 12.)

III. ANALYSIS

A. Personal Jurisdiction over Facebook and Mr. Zuckerberg

1. Legal Standard

“In opposing a defendant’s motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing that jurisdiction is proper.” *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011). However, a plaintiff need only make a *prima facie* showing of personal jurisdiction where the motion to dismiss is based on written materials rather than an evidentiary hearing. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015). Although a plaintiff’s “uncontroverted allegations” related to personal jurisdiction “must be taken as true,” “[a] plaintiff may not simply rest on the ‘bare allegations of [the] complaint.’” *Id.* (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004)) (second alteration in original). “A *prima facie* showing means that the plaintiff has produced admissible evidence, which if believed, is sufficient to establish the existence of personal jurisdiction.” *Microsoft Corp. v. Mountain W. Computs.*, No. C14-1772RSM, 2015 WL 4479490, at *3 (W.D. Wash. July 22, 2015) (citing *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995)).

“Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over [defendants].” *Daimler AG v. Bauman*, --- U.S. ---, 134 S. Ct. 746, 753

(2014) (citing Fed. R. Civ. P. 4(k)(1)(A)). Washington State permits the exercise of personal jurisdiction over defendants to the same extent allowed by the due process clause of the United States Constitution. *See Failla v. FixtureOne Corp.*, 336 P.3d 1112, 1116 (Wash. 2014) (“[Washington’s] long-arm statute [is] designed to be co-extensive with federal due process . . .”). The court therefore analyzes whether Mr. Ralls has demonstrated the court’s personal jurisdiction over Defendants under “the limits imposed by the due process clause.” *Daimler*, 134 S. Ct. at 753. “Due process requires that the defendant ‘have certain minimum contacts’ with the forum state ‘such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.’” *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015) (quoting *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945) (internal quotations omitted)).

Personal jurisdiction may be general or specific. *Id.* “[A] plaintiff invoking general jurisdiction must meet an ‘exacting standard’ for the minimum contacts required.” *Ranza*, 793 F.3d at 1069 (quoting *CollegeSource*, 653 F.3d at 1074)). A defendant corporation is subject to the court’s general jurisdiction where its “affiliations [are] so continuous and systematic as to render the foreign corporation essentially at home in the forum State, *i.e.*, comparable to a domestic enterprise in that State.” *Daimler*, 134 S. Ct. at 758 n.11 (internal quotations and citations omitted). “The paradigmatic locations where general jurisdiction is appropriate over a corporation are its place of incorporation and its principal place of business.” *Ranza*, 793 F.3d at 1069. A corporation will be subject to general jurisdiction in another state only in an “exceptional case.” *Daimler*, 134 S. Ct. at 761 n.19. “For an individual, the paradigm forum for the

1 exercise of general jurisdiction is the individual's domicile" *Goodyear Dunlop*
 2 *Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011).

3 "Specific jurisdiction exists when a case 'aris[es] out of or relate[s] to the
 4 defendant's contacts with the forum.'" *Ranza*, 793 F.3d at 1068 (quoting *Helicopteros*
 5 *Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984)). For a defendant to
 6 be subject to the court's specific jurisdiction

7 (1) [t]he non-resident defendant must purposefully direct his activities or
 8 consummate some transaction with the forum or resident thereof; or
 9 perform some act by which he purposefully avails himself of the privilege
 10 of conducting activities in the forum, thereby invoking the benefits and
 11 protections of its laws; (2) the claim must be one which arises out of or
 12 relates to the defendant's forum-related activities; and (3) the exercise of
 13 jurisdiction must comport with fair play and substantial justice, i.e. it must
 14 be reasonable.

15 *Id.*

16 2. Defendants' Motion to Dismiss

17 Defendants argue that Mr. Ralls "has failed to carry his burden of demonstrating
 18 personal jurisdiction over Facebook or [Mr.] Zuckerberg" (Mot. at 9), and that the court
 19 has neither general nor specific jurisdiction over them (*id.* at 9-12). Specifically,
 20 Defendants argue that "Facebook is not 'at home' in Washington because it is a Delaware
 21 corporation and its principal place of business [is] in California and this is not an

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1 exceptional case.”⁴ (*Id.* at 11.) Defendants contend that it would “violate due process to
 2 subject Facebook to general jurisdiction in this forum.” (*Id.*) Although Defendants’
 3 arguments about the court’s lack of general jurisdiction address Facebook specifically,
 4 Defendants contend that Mr. Ralls’s complaint “contains no allegations against [Mr.]
 5 Zuckerberg in his personal capacity and the FAC should therefore be dismissed as to
 6 [Mr.] Zuckerberg” (*Id.* at 7 n.1.)

7 In addition, Defendants argue that the court does not have specific personal
 8 jurisdiction over them because Mr. Ralls’s complaint “is silent as to how Facebook or
 9 [Mr.] Zuckerberg could have purposely availed themselves of the privileges of
 10 conducting activities in Washington state, or that [Mr. Ralls’s] claim arises out of those
 11 alleged forum-related activities.” (*Id.*) Defendants argue that Facebook’s Statement of
 12 Rights and Responsibilities (“SRR”) makes clear that “Facebook does not avail itself of
 13 Washington law by providing services to” Mr. Ralls because “the SRR provides that any
 14 dispute between Plaintiff and Facebook will be resolved exclusively before California
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 17 ⁴ Defendants refer the court to Facebook’s Form 10-K for the period ending December
 18 31, 2015, to establish that Facebook is a Delaware corporation with its principal place of
 19 business in California. (Mot. at 8 n.4); *see also* FACEBOOK, INC. FORM 10-K, FOR THE PERIOD
 20 ENDING DEC. 31, 2015, at 1, 7, <https://investor.fb.com/financials/sec-filings-details/default.aspx?FilingId=11131970> (last visited Oct. 19, 2016). The court takes judicial notice of these facts.
 21 *See In re White Elec. Designs Corp. Sec. Litig.*, 416 F. Supp. 2d 754, 760 (D. Ariz. 2006)
 22 (“[J]udicial notice is appropriate for SEC filings . . . as they are capable of accurate and ready
 determination by resort to sources whose accuracy cannot be reasonably questioned.”); Fed. R.
 Evid. 201(b)(2) (“The court may judicially notice a fact that is not subject to reasonable dispute
 because it . . . can be accurately and readily determined from sources whose accuracy cannot
 reasonably be questioned.”); Fed. R. Evid. 201(c)(1) (“The court . . . may take judicial notice on
 its own.”).

1 laws courts and governed by California law.” (*Id.*; *see also* Tyler Decl. (Dkt. # 31) Ex.
2 A.)

3 In light of Defendants’ challenge that Mr. Ralls’s complaint fails to sufficiently
4 allege the court’s personal jurisdiction over them, Mr. Ralls must make a *prima facie*
5 showing of the court’s personal jurisdiction. *See Ranza*, 793 F.3d at 1068. To meet this
6 burden, Mr. Ralls must rely on more than the bare allegations of his complaint and must
7 “produce[] admissible evidence, which if believed, is sufficient to establish the existence
8 of personal jurisdiction.” *Mountain W. Computs.*, 2015 WL 4479490, at *3. Even
9 construing his *pro se* filings liberally as the court must do, *see Balistreri v. Pacifica*
10 *Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990), Mr. Ralls has not made the necessary
11 showing.

12 Mr. Ralls’s complaint does not include any allegations related to the court’s
13 exercise of personal jurisdiction over either Mr. Zuckerberg or Facebook. (*See generally*
14 FAC.) Mr. Ralls also did not respond to Defendants’ motion to dismiss or otherwise file
15 any other information with the court, which the court considers “an admission that the
16 motion has merit.” Local Rules W.D. Wash. LCR 7(b)(2). In short, Mr. Ralls has not
17 provided the court with any allegations or any evidence to support the court’s exercise of
18 personal jurisdiction over Defendants. Therefore, Mr. Ralls has not shown that this is an
19 “exceptional case,” *Daimler*, 134 S. Ct. at 761 n.19, in which a corporation incorporated
20 in Delaware with its principal place of business in California is subject to general
21 jurisdiction in Washington. Mr. Ralls has also not demonstrated that Mr. Zuckerberg is
22 subject to the court’s general jurisdiction. *See Goodyear*, 564 U.S. at 924 (“[T]he

1 paradigm forum for the exercise of general jurisdiction is the individual's
2 domicile . . .").

3 In addition, Mr. Ralls has failed to show specific jurisdiction because he makes no
4 allegations and provides no evidence that Defendants purposefully directed their
5 activities towards Washington, that the conduct Mr. Ralls complains of arose from any
6 activities purposefully directed towards Washington, or that it would be reasonable to
7 exercise personal jurisdiction over Defendants. *See Ranza*, 793 F.3d at 1068 (listing
8 three-part test to establish specific personal jurisdiction). The court further notes that
9 personal jurisdiction over Facebook may not exist simply because a user avails himself of
10 Facebook's services in a state other than the states in which Facebook is incorporated and
11 has its principal place of business. *See Gullen v. Facebook.com, Inc.*, No. 15 C 7681,
12 2016 WL 245910, at *2 (N.D. Ill. Jan. 21, 2016) ("Because plaintiff does not allege that
13 Facebook targets its alleged biometric collection activities at Illinois residents the fact
14 that its site is accessible to Illinois residents does not confer specific jurisdiction over
15 Facebook.").

16 The court therefore grants Defendants' motion to dismiss for lack of personal
17 jurisdiction. Because the court concludes that it does not have personal jurisdiction over
18 Defendants, the court does not address Defendants' motion to dismiss under Federal Rule
19 of Civil Procedure 12(b)(6).

20 **B. Mr. Ralls's Suit Against the Government**

21 Mr. Ralls bases his suit against the Government on the First and Ninth
22 Amendments. (FAC at 4-5.) Title 28 U.S.C. § 1915(e) charges the court with

1 independently screening IFP plaintiffs' complaints to determine if the complaints are
2 frivolous or fail to state a claim upon which relief may be granted. *See* 28 U.S.C.
3 § 1915(e)(2); *see also id.* § 1915A(b)(1); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir.
4 2000) (clarifying that Section 1915(e)'s screening provisions apply to all IFP
5 proceedings, not just those filed by prisoners). In addition, the court has "an ongoing
6 obligation to be sure that jurisdiction exists." *Matheson v. Progressive Specialty Ins. Co.*,
7 319 F.3d 1089, 1090 (9th Cir. 2003).

8 The mere fact that Mr. Ralls has named the Government as a defendant does not
9 give this court jurisdiction. "[T]he United States is entitled to sovereign immunity from
10 any claim for damages unless immunity has been explicitly waived by Congress."
11 *Comm. for Immigration Rights of Sonoma Cty. v. Cty. of Sonoma*, 644 F. Supp. 2d 1177,
12 1192 (N.D. Cal. 2009). Although Congress has not explicitly waived sovereign
13 immunity for suits against federal agents acting under color of federal authority, the
14 Supreme Court has allowed actions for monetary damages under *Bivens v. Six Unknown*
15 *Names Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) in certain
16 circumstances.⁵ *Id.* The Ninth Circuit Court of Appeals "has held that *Bivens* authorizes
17 First Amendment damages claims," *Moss v. United States Secret Serv.*, 572 F.3d 962,
18 967 n.4 (9th Cir. 2009); *see also Gibson v. United States*, 781 F.2d 1334 (9th Cir. 1986),
19 as Mr. Ralls appears to assert here. Nonetheless, under *Bivens*, Mr. Ralls "must allege:
20 (1) that a right secured by the Constitution of the United States was violated, and (2) that

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22 ⁵ Under *Bivens*, claims against federal agencies or against federal officers acting in their
official capacities are not cognizable. *Id.* at 1193.

1 the violation was committed by a federal actor.” *Comm. for Immigration Rights of*
2 *Sonoma Cty.*, 644 F. Supp. 2d at 1193. Mr. Ralls has not named a federal actor in this
3 case or alleged any facts showing how a federal actor caused him harm. (*See* FAC.)
4 Accordingly, the court does not have jurisdiction over Mr. Ralls’s First Amendment
5 claim.

6 Even if Mr. Ralls had shown a basis for jurisdiction, the court would nevertheless
7 dismiss his complaint because he fails to adequately plead a First Amendment claim. Mr.
8 Ralls must plead “factual content that allows the court to draw the reasonable inference
9 that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662,
10 678 (2009). Mr. Ralls alleges only that “my government is actively instructing Facebook
11 to violate my rights” and that he “would also like to know if my government is having
12 Facebook track me as a terrorist for no good reason.” (FAC at 3.) Immediately
13 following these allegations, Mr. Ralls cites the First Amendment, but does not address
14 how the alleged harm relates to this constitutional provision, if at all. (*See id.*)
15 Therefore, Mr. Ralls has not sufficiently pled “factual content” that would permit the
16 court to “draw the reasonable inference” that the Government is liable for these acts, even
17 if the acts Mr. Ralls complains of constitute viable claims under the First Amendment.
18 *See Iqbal*, 556 U.S. at 678.

19 In addition, “causes of action based on the Ninth Amendment . . . do not constitute
20 legal claims because the Ninth Amendment has never been recognized as independently
21 securing any constitutional rights cognizable in civil rights litigation.” *Jamali v. Low*,
22 2015 WL 6125885, at *3 (D. Ariz. Apr. 10, 2015) (citing *Strandberg v. City of Helena*,

1 791 F.2d 744, 748 (9th Cir. 1986) (“[T]he [N]inth [A]mendment has never been
2 recognized as independently securing any constitutional right, for purposes of pursuing a
3 civil rights claim.”)). Accordingly, Mr. Ralls’s complaint fails to state a claim under the
4 Ninth Amendment.

5 **C. Leave to Amend**

6 Leave to amend is mandatory for *pro se* plaintiffs unless it is absolutely clear that
7 amendment could not cure the defects in the complaint. *Lucas v. Dep’t of Corr.*, 66 F.3d
8 245, 248 (9th Cir. 1995) (per curiam). However, a district court may deny amendment
9 where amendment would be futile. *See Garmon v. Cty. of L.A.*, 828 F.3d 837, 842 (9th
10 Cir. 2016) (noting that a district court may deny leave to amend when “amendment
11 would be futile or the plaintiff has failed to cure the complaint’s deficiencies despite
12 repeated opportunities”); *Novak v. United States*, 795 F.3d 1012, 1021 (9th Cir. 2015)
13 (“Futility alone can justify a court’s refusal to grant leave to amend.”). A proposed
14 amendment is futile “if no set of facts can be proved under the amendment to the
15 pleadings that would constitute a valid and sufficient claim or defense.” *Miller v. Rykoff-*
16 *Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988).

17 Based on the foregoing, the court determines that any further amendment of Mr.
18 Ralls’s complaint as to his Ninth Amendment claim against the Government would be
19 futile because “causes of action based on the Ninth Amendment . . . do not constitute
20 legal claims” *Jamali*, 2015 WL 6125885, at *3. Accordingly, the court dismisses
21 Mr. Ralls’s Ninth Amendment claim with prejudice.

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1 However, the court cannot at this time determine whether further amendment of
2 Mr. Ralls's complaint would be futile as to his First Amendment claim against the
3 Government or as to showing personal jurisdiction over Defendants.⁶ Therefore,
4 although the court dismisses Mr. Ralls's complaint, it does so with leave to amend on
5 these two issues. In his amended complaint, Mr. Ralls should (1) correct the deficiencies
6 the court has identified with regard to Mr. Ralls's First Amendment claim against the
7 Government, and (2) allege facts that sufficiently demonstrate that Defendants' contacts
8 with Washington are sufficient for the court to exercise personal jurisdiction.

9 Mr. Ralls must file his amended complaint no later than 20 days of the date of this
10 order. If Mr. Ralls does not timely comply with this order or if his amended complaint
11 fails to allege sufficient contacts to support the exercise of personal jurisdiction over
12 Defendants, sufficient facts to support the exercise of jurisdiction over a First
13 Amendment claim against the Government, or sufficient facts to support a First
14 Amendment claim against the Government for which relief may be granted, the court will
15 dismiss his claims with prejudice.

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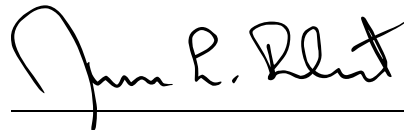
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19 ⁶ The court also notes that there is no indication that Mr. Ralls has served the
20 Government with a copy of the summons and complaint pursuant to Federal Rule of Civil
21 Procedure 4. (*See* Dkt.); Fed. R. Civ. P. 4(c) (addressing service in general), (i) (addressing
22 service of a Government official), (m) (addressing time for service). "If a defendant is not
served within 90 days after the complaint is filed, the court—on motion or on its own after notice
to the plaintiff—must dismiss the action without prejudice" Fed. R. Civ. P. 4(m). The
court therefore notifies Mr. Ralls that his failure to serve the Government is an independent
ground upon which the court may dismiss his case without prejudice.

IV. CONCLUSION

Based on the foregoing analysis, the court GRANTS Defendants' motion to dismiss for lack of personal jurisdiction (Dkt. # 30) and DISMISSES Mr. Ralls's first amended complaint as to Defendants without prejudice. The court further DISMISSES Mr. Ralls's Ninth Amendment claim against the Government with prejudice and DISMISSES Mr. Ralls's First Amendment claim against the Government without prejudice. The court ORDERS Mr. Ralls to file an amended complaint that conforms to the strictures detailed in this order within 20 days of the date of this order or the court will dismiss this case with prejudice.

Dated this 20th day of October, 2016.



JAMES L. ROBART
United States District Judge